
WELSH STATUTORY INSTRUMENTS

2005 No. 3254

The Official Feed and Food Controls (Wales) Regulations 2005

PART I

PRELIMINARY

Title, commencement and application

1. The title of these Regulations is the Official Feed and Food Controls (Wales) Regulations 2005, they come into force on 1 January 2006 and apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Food Safety Act 1990;

“the Agency” (“*yr Asiantaeth*”) means the Food Standards Agency;

“the Assembly” (“*y Cynulliad*”) means the National Assembly for Wales;

“authorised officer” (“*swyddog awdurdodedig*”)—

- (a) in relation to a competent authority, means any person (whether or not an officer of the authority) who is authorised by them in writing, either generally or specially, to act in matters arising under the Official Control Regulations; and
- (b) in relation to a relevant enforcement authority, means any person (whether or not an officer of the authority) who is authorised by them in writing, either generally or specially, to act in matters arising under Part II of these Regulations in relation to their execution and enforcement of regulation 16;

“competent authority” (“*awdurdod cymwys*”) means an authority which, by virtue of regulation 3, is designated for the purposes of any of the provisions of Regulation 882/2004;

“feed authority” (“*awdurdod bwyd anifeiliaid*”) means the authority required by section 67(1) of the Agriculture Act 1970(1) to enforce that Act within its area or district as the case may be;

“food authority” (“*awdurdod bwyd*”) has the meaning it bears by virtue of section 5(1A) of the Act;

“the Official Control Regulations” (“*y Rheoliadau Rheolaethau Swyddogol*”) means these Regulations and Regulation 882/2004;

“port health authority” (“*awdurdod iechyd porthladd*”) means in relation to any port health district constituted by order under section 2(3) of the Public Health (Control of Disease) Act 1984(2), a port health authority for that district constituted by order under section 2(4) of that Act;

(1) 1970 c. 40.

(2) 1984 c. 22.

“premises” (“*mangre*”) includes any establishment, any place, vehicle, stall or moveable structure and any ship or aircraft;

“primary production” (“*cynhyrchu sylfaenol*”) has the meaning it bears in Regulation 852/2004;

“Regulation 178/2002” (“*Rheoliad 178/2002*”), “Regulation 852/2004” (“*Rheoliad 852/2004*”), “Regulation 853/2004” (“*Rheoliad 853/2004*”), “Regulation 882/2004” (“*Rheoliad 882/2004*”) and “Directive 2004/41” (“*Cyfarwyddeb 2004/41*”) have the meanings respectively given to them in Schedule 1;

“relevant enforcement authority” (“*awdurdod gorfodi perthnasol*”) means a body which, by virtue of regulation 17, is made responsible for executing and enforcing paragraph (3) of regulation 5, paragraph (8) of regulation 9 and regulations 11 and 16;

“relevant feed law” (“*cyfraith bwyd anifeiliaid berthnasol*”) has the meaning given to it in Schedule 2; and

“relevant food law” (“*cyfraith bwyd berthnasol*”) has the meaning given to it in Schedule 3.

(2) Subject to paragraph (3), any expression other than one defined in paragraph (1) that is used both in these Regulations and in the Act has the meaning it bears in the Act.

(3) Any expression used both in these Regulations and in Regulation 178/2002 or Regulation 882/2004 has the meaning it bears in Regulation 178/2002 or Regulation 882/2004 as the case may be.

(4) Any reference in these Regulations to a food authority includes a reference to a port health authority and in the context of such a reference any reference to a food authority’s area includes a reference to a port health authority’s district.

PART II

MAIN PROVISIONS

Competent authorities

3.—(1) Subject to paragraphs (2) and (5), any body specified in Column 1 of Schedule 4 is designated as a competent authority for the purposes of the provisions of Regulation 882/2004 indicated in the corresponding entry in Column 2 of that Schedule in so far as those provisions apply in relation to relevant feed law.

(2) Where the feed authority is designated as a competent authority pursuant to paragraph (1) the designation extends to its area or district only, as the case may be.

(3) Subject to paragraphs (4) to (6), any body specified in column 1 of Schedule 5 is designated as a competent authority for the purposes of the provisions of Regulation 882/2004 indicated in the corresponding entry in column 2 of that Schedule in so far as those provisions apply in relation to relevant food law.

(4) Where the feed authority is designated as a competent authority pursuant to paragraph (3) the designation will extend to its area or district only as the case may be.

(5) Where the Agency is designated as a competent authority pursuant to paragraph (1) or (3) for the purposes of Article 31(1) of Regulation 882/2004, the designation extends in relation to primary production and the associated operations in respect of which the Agency executes and enforces the Food Hygiene (Wales) Regulations 2005(3) by virtue of regulation 5(1)(a) of those Regulations.

(6) Where the Agency is designated as a competent authority pursuant to paragraph (3) for the purposes of Article 31(2) of Regulation 882/2004, the designation will extend, as regards Article 31(2)(a) to (e), to those establishments and activities in respect of which the Agency executes and enforces the Food Hygiene (Wales) Regulations 2005 by virtue of regulation 5(2) of those Regulations.

Exchanging and providing information

4.—(1) For the purposes of enabling competent authorities, other OFFC authorities and Member States to fulfil the obligations placed on them by Regulation 882/2004 competent authorities may exchange among themselves or provide to other OFFC authorities any information received by them in the execution or enforcement of relevant feed law or relevant food law.

(2) For the purpose of executing or enforcing relevant feed law or relevant food law, competent authorities may exchange among themselves any information received by them in the execution or enforcement of relevant feed law or relevant food law.

(3) Competent authorities may share information received by them in the execution or enforcement of relevant feed law or relevant food law with the bodies which execute and enforce relevant feed law or relevant food law in England, Northern Ireland and Scotland for the purposes of facilitating the execution or enforcement of relevant feed law or relevant food law in those countries.

(4) Paragraphs (1), (2) and (3) are without prejudice to any other power of competent authorities to disclose information by or under Community legislation.

(5) For the purposes of this regulation, “other OFFC authorities” means authorities designated in the United Kingdom as competent authorities for the purposes of Regulation 882/2004 other than the competent authorities designated under these Regulations.

Obtaining information

5.—(1) For the purpose of enabling competent authorities and Member States to fulfil the obligations placed on them by Regulation 882/2004 and for the purpose of executing or enforcing relevant feed law or relevant food law, a competent authority may require a control body—

- (a) to provide the competent authority with any information which it has reasonable cause to believe the control body is able to give; or
- (b) to make available to the competent authority for inspection by it any records which it has reasonable cause to believe are held by the control body or are otherwise within its control (and if they are kept in computerised form, to make them available in a legible form).

(2) The competent authority may copy any records made available to it under paragraph (1)(b).

(3) A person who —

- (a) fails without reasonable excuse to comply with any requirement imposed under paragraph (1); or
- (b) in purported compliance with such a requirement furnishes information which he or she knows to be false or misleading in any material particular or recklessly furnishes information which is false or misleading in any material particular,

is guilty of an offence.

(4) For the purposes of paragraph (1), the term “control body” (“*corff rheoli*”) includes any member, officer or employee of a control body.

Power to issue codes of recommended practice

6.—(1) For the guidance of feed authorities and food authorities, the Assembly may issue codes of recommended practice as regards—

- (a) functions conferred upon those authorities in their capacity as competent authorities by or under Regulation 882/2004; or
- (b) the execution and enforcement of Part III of these Regulations.

(2) The Agency may, after consulting the Assembly, give a feed authority or food authority a direction requiring them to take any specified steps in order to comply with a code issued under this regulation.

(3) In exercise of the functions conferred on them as competent authorities by or under Regulation 882/2004, every feed authority and food authority—

- (a) must have regard to any relevant provision of any such code; and
- (b) must comply with any direction which is given under this regulation and requires them to take any specified steps in order to comply with such a code.

(4) Any direction under paragraph (2) will, on the application of the Agency, be enforceable by mandatory order.

(5) The Agency must consult the Assembly before making an application under paragraph (4).

(6) Before issuing any code under this regulation, the Assembly will have regard to any relevant advice given by the Agency.

Monitoring of enforcement action

7.—(1) The Agency has the function of monitoring the performance of enforcement authorities in enforcing relevant audit legislation.

(2) That function includes, in particular, setting standards of performance (whether for enforcement authorities generally or for particular authorities) in relation to the enforcement of any relevant audit legislation.

(3) Each annual report of the Agency must contain a report on its activities during the year in enforcing any relevant audit legislation for which it is the enforcement authority and its performance in respect of—

- (a) any standards under paragraph (2) that apply to those activities; and
- (b) any objectives relating to those activities that are specified in the statement of objectives and practices under section 22 of the Food Standards Act 1999(4).

(4) The Agency may make a report to any other enforcement authority on their performance in enforcing any relevant audit legislation and such a report may include guidance as to action which the Agency considers would improve that performance.

(5) The Agency may direct an authority to which such a report has been made —

- (a) to arrange for the publication in such manner as may be specified in the direction of, or of specified information relating to, the report; and
- (b) within such period as may be so specified to notify the Agency of what action they have taken or propose to take in response to the report.

(6) Section 19 of the Food Standards Act 1999 applies in relation to information obtained through monitoring under this regulation as if it were information obtained through monitoring under section 12 of that Act.

(4) 1999 c. 28.

Power to request information relating to enforcement action

8.—(1) For the purpose of carrying out its function under regulation 7 in relation to any enforcement authority the Agency may require a person mentioned in paragraph (2) —

- (a) to provide the Agency with any information which it has reasonable cause to believe that person is able to give; or
- (b) to make available to the Agency for inspection any records which it has reasonable cause to believe are held by that person or otherwise within that person's control (and, if they are kept in computerised form, to make them available in a legible form).

(2) A requirement under paragraph (1) may be imposed on —

- (a) the enforcement authority or any member, officer or employee of the authority; or
- (b) a person subject to any duty under relevant audit legislation (being a duty enforceable by an enforcement authority) or any officer or employee of such a person.

(3) The Agency may copy any records made available to it in pursuance of a requirement under paragraph (1)(b).

Power of entry for persons monitoring enforcement action

9.—(1) The Agency may authorise any individual (whether a member of its staff or otherwise) to exercise the powers specified in paragraph (4) for the purpose of carrying out its function under regulation 7 in relation to any enforcement authority.

(2) No authorisation under this regulation may be issued except in pursuance of a decision taken by the Agency itself or by a committee, sub-committee or member of the Agency acting on behalf of the Agency.

(3) An authorisation under this regulation must be in writing and may be given subject to any limitations or conditions specified in the authorisation (including conditions relating to hygienic precautions to be taken while exercising powers in pursuance of the authorisation).

(4) An authorised person may —

- (a) enter any premises mentioned in paragraph (5) at any reasonable hour in order to inspect the premises or anything which may be found on them;
- (b) take samples of any articles or substances found on such premises;
- (c) inspect and copy any records found on such premises (and, if they are kept in computerised form, require them to be made available in a legible form);
- (d) require any person present on such premises to provide him or her with such facilities, such records or information and such other assistance as he or she may reasonably request.

(5) The premises which may be entered by an authorised person are —

- (a) any premises occupied by the enforcement authority;
- (b) any laboratory or similar premises at which work related to the enforcement of any relevant legislation has been carried out for the enforcement authority; and
- (c) any other premises (not being a private dwelling-house) which the authorised person has reasonable cause to believe are premises in respect of which the enforcement powers of the enforcement authority are (or have been) exercisable.

(6) The power to enter premises conferred on an authorised person includes power to take with him or her any other person he or she may consider appropriate.

(7) An authorised person must on request —

- (a) produce his or her authorisation before exercising any powers under paragraph (4); and

(b) provide a document identifying any sample taken, or documents copied, under those powers.

(8) If a person who enters any premises by virtue of this section discloses to any person any information obtained on the premises with regard to any trade secret that person is, unless the disclosure is made in the performance of his or her duty, guilty of an offence.

(9) Where the Agency is the enforcement authority in relation to relevant audit legislation this regulation applies in relation to the Agency (in relation to its performance in enforcing those provisions) with the omission of paragraph (5)(a).

(10) In this regulation “authorised person” means a person authorised under this regulation.

Meaning of “enforcement authority” and related expressions

10.—(1) In regulations 7 to 9 “relevant audit legislation” means relevant feed law and relevant food law in respect of which the Agency is designated as a competent authority pursuant to paragraphs (1) and (3) of regulation 3 respectively but does not include relevant legislation as defined in section 15 of the Food Standards Act 1999.

(2) In regulations 7 to 9 “enforcement authority” means the authority by whom relevant audit legislation is to be enforced and includes the Agency itself if by virtue of that legislation it is the enforcement authority in relation to it but does not include the European Commission; and “enforcement” in relation to relevant audit legislation includes the execution of any provisions of that legislation.

(3) Any reference in regulations 7 to 9 (however expressed) to the performance of an enforcement authority in enforcing any relevant audit legislation includes a reference to the capacity of that authority to enforce it.

Offences relating to regulations 8 and 9

11. A person who —

- (a) intentionally obstructs a person exercising powers under paragraph (4)(a), (b) or (c) of regulation 9;
- (b) fails without reasonable excuse to comply with any requirement imposed under paragraph (1) of regulation 8 or paragraph (4)(d) of regulation 9; or
- (c) in purported compliance with such a requirement furnishes information which that person knows to be false or misleading in any material particular or recklessly furnishes information which is false or misleading in any material particular,

is guilty of an offence.

Right of appeal

12.—(1) Any person who is aggrieved by a decision of the competent authority taken in respect of an establishment subject to approval under Article 4(2) of Regulation 853/2004 pursuant to—

- (a) Article 31(2)(c) of Regulation 882/2004 (approval);
- (b) Article 31(2)(d) of Regulation 882/2004 (conditional approval and full approval); or
- (c) Article 31(2)(e) of Regulation 882/2004 (withdrawal of approval and suspension of approval),

may appeal to a magistrates' court.

(2) The procedure on an appeal to a magistrates' court under paragraph (1) is by way of complaint for an order, and the Magistrates' Courts Act 1980(5) applies to the proceedings.

(3) The period within which an appeal under paragraph (1) may be brought is one month from the date on which notice of the decision was served on the person desiring to appeal and the making of a complaint for an order is deemed for the purposes of this paragraph to be the bringing of the appeal.

(4) Where on an appeal under paragraph (1) a magistrates' court determines that the decision of the competent authority is incorrect, the authority must give effect to the determination of the court.

(5) Where an approval is withdrawn, the food business operator who, immediately before such withdrawal, had been using the establishment concerned may continue to use it, subject to any conditions imposed by the competent authority for the protection of public health, unless—

- (a) the time for appealing against the decision to withdraw the approval has expired without an appeal having been lodged; and
- (b) where an appeal against that decision has been lodged, the appeal has been finally disposed of or abandoned.

(6) Nothing in paragraph (5) permits an establishment to be used for a food business if—

- (a) a hygiene prohibition order, a hygiene emergency prohibition notice or a hygiene emergency prohibition order has been imposed in relation to the establishment;
- (b) a prohibition order, an emergency prohibition notice, an emergency prohibition order or an emergency control order has been imposed in relation to the establishment pursuant to section 11, 12 or 13 of the Act;
- (c) the approval of the establishment has been suspended pursuant to Article 31(2)(e) of Regulation 882/2004; or
- (d) the establishment is prevented from operating following the service of a remedial action notice.

(7) In this Regulation each of the terms “hygiene prohibition order”, “hygiene emergency prohibition notice”, “hygiene emergency prohibition order” and “remedial action notice” has the same meaning as it has in the Food Hygiene (Wales) Regulations 2005.

Appeals to Crown Court against dismissal under regulation 12(1)

13. A person who is aggrieved by the dismissal by a magistrates' court of an appeal to it under regulation 12(1) may appeal to the Crown Court.

Staff of competent authority of another Member State

14. An authorised officer of a competent authority may take with him or her the staff of the competent authority of another Member State for the purpose of conducting an administrative enquiry under Article 36 of Regulation 882/2004.

Commission experts

15.—(1) When an enforcing officer enters premises for the purposes of executing and enforcing official controls the officer may take with him or her a Commission expert to enable that expert to carry out functions under Article 45 of Regulation 882/2004.

(2) In this Regulation “enforcing officer” means an authorised officer of any authority which is responsible for executing and enforcing official controls for the verification of compliance with relevant feed law and relevant food law.

Prohibition on disclosure of trade secrets

16. If a person enters any premises by virtue of regulation 14 or 15 and discloses to any person any information obtained on the premises with regard to any trade secret he or she will be, unless the disclosure is made in the performance of his or her duty, guilty of an offence.

Execution and enforcement

17.—(1) The authority responsible for executing and enforcing paragraph (3) of regulation 5 is the competent authority who imposed the requirement on the control body concerned under paragraph (1) of that regulation.

(2) The authority responsible for executing and enforcing paragraph (8) of regulation 9 and regulation 11 is the Agency.

(3) The authority responsible for executing and enforcing regulation 16 is the authority whose officer took the person who made the disclosure on to the premises concerned.

Powers of entry

18.—(1) An authorised officer of a relevant enforcement authority other than the Agency will, on producing, if so required, some duly authenticated document showing his or her authority, have a right at all reasonable hours—

- (a) to enter any premises within the authority's area or as the case may be district, for the purpose of ascertaining whether there is or has been on the premises any contravention of paragraph (3) of regulation 5 or regulation 16 for which that authority has enforcement responsibility pursuant to paragraph (1) or as the case may be (3) of regulation 17; and
- (b) to enter any premises, whether within or outside the authority's area or as the case may be district, for the purpose of ascertaining whether there is on the premises any evidence of any such contravention within that area or district,

but admission to any premises used only as a private dwelling-house may not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.

(2) An authorised officer of the Agency will, on producing if so required some duly authenticated document showing that officer's authority, have a right at all reasonable hours to enter any premises for the purpose of—

- (a) ascertaining whether there is or has been on the premises any contravention of paragraph (8) of regulation 9 or regulation 11, or any contravention of paragraph (3) of regulation 5 or regulation 16 for which the Agency has enforcement responsibility pursuant to paragraph (1) or as the case may be (3) of regulation 17; and
- (b) ascertaining whether there is on the premises any evidence of any such contravention,

but admission to any premises used only as a private dwelling-house may not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.

(3) If a justice of the peace, on sworn information in writing, is satisfied that there is reasonable ground for entry onto any premises for any such purpose as is mentioned in paragraph (1) or (2) and either—

- (a) that admission to the premises has been refused, or a refusal is apprehended, and that notice of the intention to apply for a warrant has been given to the occupier; or
- (b) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier is temporarily absent,

the justice may by warrant signed by him or her authorise the authorised officer to enter the premises, if need be by reasonable force.

(4) Every warrant granted under this regulation will continue in force for a period of one month.

(5) An authorised officer entering any premises by virtue of this regulation, or of a warrant issued under it, may take with him or her such other persons as the officer considers necessary, and on leaving any unoccupied premises which he or she has entered by virtue of such a warrant must leave them as effectively secured against unauthorised entry as that in which they were found.

(6) An authorised officer entering premises by virtue of this regulation, or of a warrant issued under it, may inspect any records (in whatever form they are held) and, where any such records are stored in any electronic form—

- (a) may have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records; and
- (b) may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford the officer such assistance as the officer may reasonably require.

(7) Any officer exercising any power conferred by paragraph (6) may—

- (a) seize and detain any records which the officer has reason to believe may be required as evidence in proceedings under any of the provisions of this Part of the Regulations; and
- (b) where the records are stored in any electronic form, require the records to be produced in a form in which they may be taken away.

(8) If any person who enters any premises by virtue of this regulation, or of a warrant issued under it, discloses to any other person any information obtained by him or her on the premises with regard to any trade secret, he or she will, unless the disclosure was made in the performance of his or her duty, be guilty of an offence.

(9) Nothing in this regulation authorises any person, except with the permission of the local authority under the Animal Health Act 1981(6), to enter any premises—

- (a) on which an animal or bird affected with any disease to which that Act applies is kept; and
- (b) which is situated in a place declared under that Act to be infected with such a disease.

Obstruction etc. of officers

19.—(1) Any person who—

- (a) intentionally obstructs any person acting in the execution of this Part of the Regulations; or
- (b) without reasonable cause, fails to give to any person acting in the execution of this Part of the Regulations any assistance or information which that person may reasonably require of him or her for the performance of that person's functions under this Part of the Regulations,

will be guilty of an offence.

(2) Any person who, in purported compliance with any such requirement as is mentioned in paragraph (1)(b)—

- (a) furnishes information which that person knows to be false or misleading in a material particular; or
- (b) recklessly furnishes information which is false or misleading in a material particular,

will be guilty of an offence.

(6) 1981 c. 22.

(3) Nothing in paragraph (1)(b) may be construed as requiring any person to answer any question or give any information if to do so might incriminate that person.

Penalties

20.—(1) Subject to paragraph (2), a person guilty of an offence under this Part of the Regulations will be liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment to imprisonment for a term not exceeding two years, to a fine or to both.

(2) A person guilty of an offence under paragraph (3) of regulation 5, paragraph (8) of regulation 9, or regulation 11 or 16 will be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) A person guilty of an offence under regulation 19 will be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.

Time limit for prosecutions

21. No prosecution for an offence under this Part of the Regulations which is punishable under paragraph (1) of regulation 20 may be begun after the expiry of—

- (a) three years from the commission of the offence; or
- (b) one year from its discovery by the prosecutor,

whichever is the earlier.

PART III

OFFICIAL CONTROLS ON FEED AND FOOD OF NON-ANIMAL ORIGIN FROM THIRD COUNTRIES

Interpretation of this Part of the Regulations

22. In this Part of the Regulations—

“authorised officer” (“*swyddog awdurdodedig*”), in relation to an enforcement authority, means any person (whether or not an officer of the authority) who is authorised by them in writing, either generally or specially, to act in matters arising under the Import Provisions;

“the Commissioners” (“*y Comisiynwyr*”) means the Commissioners for Her Majesty’s Revenue and Customs;

“enforcement authority” (“*awdurdod gorfodi*”) means the feed enforcement authority or the food enforcement authority;

“the Import Provisions” (“*y Darpariaethau Mewnforio*”) means this Part of these Regulations and Articles 15 to 24 of Regulation 882/2004;

“outside Wales enforcement authority” (“*awdurdod gorfodi y tu allan i Gymru*”) means the body responsible for enforcing the legislation in force with respect to imported products in any part of the United Kingdom except Wales;

“product” (“*cynnyrch*”) means feed or food whose import is regulated by Article 15 of Regulation 882/2004 (feed and food of non-animal origin not included in the scope of Directive [97/78/EC](#)) and includes those composite food products listed in the Annex to Commission

Decision [2002/349/EC](#) laying down the list of products to be examined at border inspection posts under Council Directive [97/78/EC](#)(7) which include only a limited percentage of products of animal origin and which are thereby excluded from the provisions of Directive [98/78/EC](#) by Article 3(1) of that Decision;

“the relevant territories” (“*y tiriogaethau perthnasol*”) means the territories referred to in Annex I to Regulation 882/2004.

Feed enforcement responsibilities

23. It is the responsibility of the feed authority to execute and enforce the Import Provisions in its area or district as the case may be in relation to feed.

Food enforcement responsibilities

24. It is the responsibility of each food authority to execute and enforce the Import Provisions in its area in relation to food.

Functions of the Commissioners

25. The Commissioners must carry out the functions given to customs services under Article 24 of Regulation 882/2004 in relation to feed and food.

Deferred execution and enforcement

26.—(1) Where—

- (a) a product from a third country has entered Wales;
- (b) customs examination of that product has been completed or has been deferred until it reaches its place of destination elsewhere in the United Kingdom;
- (c) an authorised officer of the enforcement authority for the place of entry has on reasonable grounds issued an authorisation confirming that—
 - (i) examination of the product for the purposes of the Import Provisions should be deferred until the product arrives at its destination elsewhere in Wales, or
 - (ii) such examination should take place when the product arrives at its destination elsewhere in the United Kingdom under legislation with respect to imported products in force there; and
- (d) a person importing the product gives that authorised officer an undertaking in writing as to the matters specified in paragraph (2),

the enforcement authority for the place in which the destination is located, if in Wales, will become responsible for enforcing and executing the Import Provisions with respect to that product once it arrives there.

(2) The undertaking must—

- (a) state the destination of the product; and
- (b) confirm that—
 - (i) the container containing the product has been sealed and will not be opened until it has reached that destination,

- (ii) the opening of the container has been authorised by the enforcement authority for the place in which the destination is located, if in Wales or, as the case may be, the outside Wales enforcement authority if the destination is not in Wales, and
- (iii) the container will be available at that destination for examination under the Import Provisions or, as the case may be, legislation with respect to imported products in force elsewhere in the United Kingdom.

(3) Where an authorised officer of an enforcement authority issues an authorisation pursuant to paragraph (1)(c), that officer must—

- (a) (if the product’s place of destination is within Wales) notify the enforcement authority for that place or (if the product’s place of destination is in any other part of the United Kingdom) notify the outside Wales enforcement authority—
 - (i) that the product (so described as to enable it to be identified) has not been examined under the Import Provisions, and
 - (ii) if customs examination of the product has been deferred, of that fact; and
- (b) send the relevant authority a copy of any undertaking given pursuant to paragraph (1)(d).

(4) Where a product has been sent to a destination in Wales from another part of the British Islands and examination of that product has been deferred under legislation with respect to imported products in force there, the enforcement authority for the place of destination will become responsible for enforcing and executing the Import Provisions with respect to that product once it arrives in Wales.

(5) No person may breach an undertaking given under paragraph (1)(d).

Prohibition on introduction of certain feed and food

27.—(1) No person may—

- (a) introduce into Wales from a third country specified feed which contravenes or fails to comply with feed safety requirements; or
- (b) introduce into Wales from elsewhere in the relevant territories specified feed originating in a third country which fails to comply with feed safety requirements.

(2) No person may—

- (a) introduce into Wales from a third country specified food which fails to comply with—
 - (i) food safety requirements; or
 - (ii) the requirements of Articles 3 to 6 of Regulation 852/2004; or
- (b) introduce into Wales from elsewhere in the relevant territories specified food originating in a third country which fails to comply with—
 - (i) food safety requirements; or
 - (ii) the requirements of Articles 3 to 6 of Regulation 852/2004.

(3) In this regulation—

- (a) “specified feed” (*“bwyd anifeiliaid penodedig”*) means feed that is a product;
- (b) “specified food” (*“bwyd penodedig”*) means food that is a product.

Checks on products

28.—(1) The person responsible for introducing any product into Wales must permit an authorised officer of an enforcement authority to carry out checks in relation to the product pursuant to Article 16 of Regulation 882/2004.

(2) When an authorised officer is carrying out checks in relation to a product pursuant to Article 16 of Regulation 882/2004, the person introducing the product must provide the facilities and assistance which the authorised officer reasonably requires to carry them out.

(3) When an authorised officer of an enforcement authority is carrying out an identity check or a physical check on a product in accordance with Article 16 that officer will be entitled to require that the check takes place at a specified place.

Detention, destruction, special treatment, re-dispatch and other appropriate measures and costs

29.—(1) An enforcement authority has the power to do anything that a competent authority may do under Articles 18 to 21 and 24(3) of Regulation 882/2004 if the conditions set out in those Articles are fulfilled.

(2) The enforcement authority is the competent authority for the purposes of Article 22 of Regulation 882/2004.

Decisions pursuant to Article 19 of Regulation 882/2004 (imports of feed and food from third countries)

30.—(1) If an authorised officer of an enforcement authority wishes to take any of the measures referred to in Article 19(1)(a) and (b) of Regulation 882/2004 in respect of feed or food the officer must serve a notice to that effect on the feed or food business operator, as the case may be, responsible for it after the officer has heard that feed or food business operator as provided in Article 19.

(2) If an authorised officer of an enforcement authority wishes to exercise any of the powers referred to in Article 19(2) of Regulation 882/2004 in respect of feed or food the officer must serve a notice to that effect on the feed or food business operator, as the case may be, responsible for it.

Right of appeal in respect of notices served under regulation 30

31.—(1) Any person who is aggrieved by a decision of an authorised officer of an enforcement authority to serve a notice under regulation 30 may appeal to a magistrates' court.

(2) The procedure on an appeal to a magistrates' court under paragraph (1) is by way of complaint for an order, and the Magistrates' Courts Act 1980 applies to the proceedings.

(3) The period within which an appeal under paragraph (1) may be brought is one month from the date on which the notice was served on the person desiring to appeal and the making of a complaint for an order is deemed for the purposes of this paragraph to be the bringing of the appeal.

(4) Where on an appeal under paragraph (1) a magistrates' court determines that the decision of the authorised officer of the enforcement authority is incorrect, the authority must give effect to the determination of the court.

Appeals to Crown Court against dismissal of appeal under regulation 31

32. A person who is aggrieved by the dismissal by a magistrates' court of an appeal to it under regulation 31(1) may appeal to the Crown Court.

Serious risk to animal or public health

33.—(1) Where the Assembly or the Agency learns of, or has reasonable grounds to suspect, that food or feed has been or may be introduced from a third country is likely to constitute a serious risk to animal or public health, either of them may by written declaration suspend, or impose conditions on, the introduction into Wales of any product from the whole or any part of that third country.

(2) Such a declaration will be in writing and published in such manner as the Assembly or the Agency, as the case may be, thinks fit specifying the products and the third country or part thereof concerned.

(3) A declaration which imposes conditions on the introduction of any product from a third country or part thereof must specify those conditions.

(4) Where a declaration is in force suspending the introduction of any product, no person may introduce that product into Wales if it originates in the third country or part thereof specified in the declaration.

(5) Where a declaration is in force imposing conditions on the introduction of any product, no person may introduce that product into Wales if it originates in the third country or part thereof specified in the declaration unless the product complies with conditions specified in the declaration.

(6) A declaration may be modified, suspended or revoked by a further written declaration published, so far as is practicable, in the same manner and to the same extent as the original declaration.

Liability for charges

34.—(1) The enforcement authority must notify the person responsible for a consignment of the charge falling to be paid for the controls carried out on it by the authority.

(2) Any charge notified to a person by the enforcement authority under paragraph (1) will be payable by that person to the enforcement authority on demand.

(3) The charge referred to in paragraph (1) is any charge for the costs incurred in relation to the consignment by the enforcement authority acting as the competent authority for the purposes of Article 22 of Regulation 882/2004 by virtue of regulation 29(2).

Procurement by authorised officers of samples with regard to food

35. An authorised officer of a food enforcement authority may, for the purposes of the execution and enforcement by that authority of the Import Provisions—

- (a) purchase a sample of any food, or any substance capable of being used in the preparation of food;
- (b) take a sample of any food, or any such substance, which—
 - (i) appears to the officer to be intended for placing on the market or to have been placed on the market, for human consumption, or
 - (ii) is found by the officer on or in any premises which the officer is authorised to enter by or under regulation 37;
- (c) take a sample from any food source, or a sample of any contact material, which is found by the officer on or in any such premises; and
- (d) take a sample of any article or substance which is found by the officer on or in any such premises and which the officer has reason to believe may be required as evidence in proceedings under any of the provisions of the Import Provisions.

Analysis etc. of samples

36.—(1) An authorised officer of an enforcement authority who has procured a sample under regulation 35 must—

- (a) if the officer considers that the sample should be analysed, submit it to be analysed by a public analyst;

- (b) if the officer considers that the sample should be examined, submit it to be examined by a food examiner.
- (2) A person, other than such an officer, who has purchased any food, or any substance capable of being used in the preparation of food, may submit a sample of it—
 - (a) to be analysed by the public analyst for the area in which the purchase was made; or
 - (b) to be examined by a food examiner.
- (3) If, in any case where a sample is proposed to be submitted for analysis under this regulation, the office of public analyst for the area in question is vacant, the sample must be submitted to the public analyst for some other area.
- (4) If, in any case where a sample is proposed to be or is submitted for analysis or examination under this regulation, the food analyst or examiner determines that he or she is for any reason unable to perform the analysis or examination, the sample must be submitted or, as the case may be, sent by him or her to such other food analyst or examiner as he or she may determine.
- (5) A food analyst or examiner must analyse or examine as soon as practicable any sample submitted or sent to him or her under this regulation, but may, except where—
 - (a) he or she is the public analyst for the area in question; and
 - (b) the sample is submitted to him or her for analysis by an authorised officer of an enforcement authority,demand in advance the payment of such reasonable fee as he or she may require.
- (6) Any food analyst or examiner who has analysed or examined a sample must give to the person by whom it was submitted a certificate specifying the result of the analysis or examination.
- (7) Any certificate given by a food analyst or examiner under paragraph (6) must be signed by him or her, but the analysis or examination may be made by any person acting under his or her direction.
- (8) In any proceedings under the Import Provisions, the production by one of the parties—
 - (a) of a document purporting to be a certificate given by a food analyst or examiner under paragraph (6); or
 - (b) of a document supplied to him or her by the other party as being a copy of such a certificate,will be sufficient evidence of the facts stated in it unless, in a case falling within sub-paragraph (a), the other party requires that the food analyst or examiner be called as a witness.
- (9) Any reference in this regulation to a public analyst for a given area will, where two or more public analysts are appointed for any area, be construed as a reference to either or any of them.
- (10) The Food Safety (Sampling and Qualifications) Regulations (8) apply to a sample procured by an authorised officer of an enforcement authority under regulation 35 as if it were a sample procured by an authorised officer under section 29 of the Act.
- (11) The certificate given by a food analyst or examiner under paragraph (6) must be in the form set out in Schedule 3 to the Food Safety (Sampling and Qualifications) Regulations 1990.

Powers of entry of authorised officers of a food enforcement authority

- 37.**—(1) An authorised officer of a food enforcement authority will, on producing, if so required, some duly authenticated document showing that officer's authority, have a right at all reasonable hours—
- (a) to enter any premises within the authority's area or as the case may be district, for the purpose of ascertaining whether there is or has been on the premises any contravention of the provisions of the Import Provisions in relation to food;

(8) S.I. 1990/2463, to which there are amendments not relevant to these Regulations.

- (b) to enter any premises, whether within or outside the authority's area or as the case may be district, for the purpose of ascertaining whether there is on the premises any evidence of any such contravention within that area; and
- (c) to enter any premises for the purpose of the performance by the authority of their functions under the Import Provisions,

but admission to any premises used only as a private dwelling-house may not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.

(2) If a justice of the peace, on sworn information in writing, is satisfied that there is reasonable ground for entry onto any premises for any such purpose as is mentioned in paragraph (1) and either—

- (a) that admission to the premises has been refused, or a refusal is apprehended, and that notice of the intention to apply for a warrant has been given to the occupier; or
- (b) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier is temporarily absent,

the justice may by warrant signed by him or her authorise the authorised officer to enter the premises, if need be by reasonable force.

(3) Every warrant granted under this regulation will continue in force for a period of one month.

(4) An authorised officer entering any premises by virtue of this regulation, or of a warrant issued under it, may take with him or her such other persons as the officer considers necessary, and on leaving any unoccupied premises which he or she has entered by virtue of such a warrant must leave them as effectively secured against unauthorised entry as that in which they were found.

(5) An authorised officer entering premises by virtue of this regulation, or of a warrant issued under it, may inspect any records (in whatever form they are held) relating to a food business and, where any such records are stored in any electronic form—

- (a) may have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records; and
- (b) may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford the officer such assistance as the officer may reasonably require.

(6) Any officer exercising any power conferred by paragraph (5) may—

- (a) seize and detain any records which the officer has reason to believe may be required as evidence in proceedings under any of the provisions of the Import Provisions; and
- (b) where the records are stored in any electronic form, require the records to be produced in a form in which they may be taken away.

(7) If any person who enters any premises by virtue of this regulation, or of a warrant issued under it, discloses to any other person any information obtained by him or her on the premises with regard to any trade secret, that person will, unless the disclosure was made in the performance of his or her duty, be guilty of an offence.

(8) Nothing in this regulation authorises any person, except with the permission of the local authority under the Animal Health Act 1981, to enter any premises—

- (a) on which an animal or bird affected with any disease to which that Act applies is kept; and
- (b) which is situated in a place declared under that Act to be infected with such a disease.

Obstruction etc. of officers

38.—(1) Any person who—

- (a) intentionally obstructs any person acting in the execution of the Import Provisions; or
- (b) without reasonable cause, fails to give to any person acting in the execution of the Import Provisions any assistance or information which that person may reasonably require of him or her for the performance of that person's functions under the Import Provisions,

will be guilty of an offence.

(2) Any person who, in purported compliance with any such requirement as is mentioned in paragraph (1)(b)—

- (a) furnishes information which he or she knows to be false or misleading in a material particular; or
- (b) recklessly furnishes information which is false or misleading in a material particular,

will be guilty of an offence.

(3) Nothing in paragraph (1)(b) may be construed as requiring any person to answer any question or give any information if to do so might incriminate that person.

Offences and penalties

39.—(1) Any person who—

- (a) contravenes or fails to comply with paragraph (5) of regulation 26, regulation 27 or paragraph (4) or (5) of regulation 33; or
- (b) fails to comply with a notice served upon that person under the Import Provisions,

will be guilty of an offence.

(2) Subject to paragraph (3), a person guilty of an offence under the Import Provisions will be liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment to imprisonment for a term not exceeding two years, to a fine or to both.

(3) A person guilty of an offence under regulation 38 will be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.

Time limit for prosecutions (imports)

40. No prosecution for an offence under the Import Provisions which is punishable under regulation 39(2) will be begun after the expiry of—

- (a) three years from the commission of the offence; or
- (b) one year from its discovery by the prosecutor,

whichever is the earlier.

PART IV

AMENDMENTS TO THE GENERAL FOOD REGULATIONS 2004

Amendments to the General Food Regulations 2004

41.—(1) The General Food Regulations 2004⁽⁹⁾ are amended in accordance with paragraphs (2) to (5) in so far as they apply in relation to Wales.

(2) For regulation 4 (requirements under Regulation (EC) No. 178/2002 : offences) there is substituted the following Regulation—

“**4.** Any person who contravenes or fails to comply with any of the following provisions of Regulation (EC) No. 178/2002 shall be guilty of an offence—

- (a) Article 12 (food and feed exported from the Community) in so far as it relates to food;
- (b) Article 14(1) (food safety requirements);
- (c) Article 16 (presentation) in so far as it relates to food;
- (d) Article 18(2) or (3) (traceability) in so far as it relates to food business operators;
- (e) Article 19 (responsibilities for food: food business operators).”.

(3) For paragraph (2)(a) of regulation 5 (punishment of offences) there is substituted the following sub-paragraph—

“(a) in the case of an offence under regulation 4(b), £20,000;”.

(4) For paragraph (1) of regulation 6 (enforcement) there is substituted the following paragraph—

“(1) Subject to paragraph (2), each food authority shall enforce and execute the following provisions of Regulation (EC) No. 178/2002 and these Regulations in its area—

- (a) Article 12 in so far as it relates to food;
- (b) Article 14;
- (c) Article 16 in so far as it relates to food;
- (d) Article 18 in so far as it relates to food business operators; and
- (e) Article 19.”.

(5) After regulation 6 (enforcement) there is inserted the following regulation—

“Defence for exports

6A. In any proceedings for an offence of contravening or failing to comply with food law it shall be a defence for the accused to prove that—

- (a) the item in respect of which the offence is alleged to have been committed was intended for export to a country that is not a member State and that the item could lawfully be exported there under Article 12 of Regulation (EC) No. 178/2002; or
- (b) the item in respect of which the offence is alleged to have been committed was intended for export to a member State and that—
 - (i) the legislation applicable to that item in that member State is compatible with the relevant provisions of food law (except in so far as it relates to feed produced for or fed to food producing animals) at Community level, and
 - (ii) the item complies with that legislation.”.

⁽⁹⁾ S.I. 2004/3279.

PART V

ENFORCEMENT AND SUPPLEMENTARY PROVISIONS

Offences due to fault of another person

42. Where the commission by any person of an offence under these Regulations is due to the act or default of some other person, that other person will be guilty of the offence; and a person may be convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first-mentioned person.

Defence of due diligence

43.—(1) In any proceedings for an offence under these Regulations, it will, subject to paragraph (2), be a defence for the accused to prove that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by the accused or by a person under his or her control.

(2) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the accused will not, without leave of the court, be entitled to rely on that defence unless—

- (a) at least seven clear days before the hearing; and
- (b) where the accused has previously appeared before a court in connection with the alleged offence, within one month of his or her first such appearance,

the accused has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in the accused's possession.

Offences by bodies corporate

44.—(1) Where an offence under these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) any person who was purporting to act in any such capacity,

he or she as well as the body corporate will be deemed to be guilty of that offence and will be liable to be proceeded against and punished accordingly.

(2) In paragraph (1)(a) “director”, in relation to any body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

Offences by Scottish partnerships

45. Where an offence under these Regulations which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner, as well as the partnership will be deemed to be guilty of that offence and liable to be proceeded against and punished accordingly.

Protection of officers acting in good faith

46.—(1) An officer of a competent authority is not personally liable in respect of any act done by him or her—

- (a) in the execution or purported execution of these Regulations; and
- (b) within the scope of his or her employment,

if the officer did that act in the honest belief that his or her duty under these Regulations required or entitled the officer to do it.

(2) Nothing in paragraph (1) may be construed as relieving any competent authority of any liability in respect of the acts of their officers.

(3) Where an action has been brought against an officer of a competent authority in respect of an act done by the officer—

- (a) in the execution or purported execution of these Regulations; but
- (b) outside the scope of his or her employment,

the authority may indemnify the officer against the whole or a part of any damages which the officer has been ordered to pay or any costs which the officer may have incurred if they are satisfied that the officer honestly believed that the act complained of was within the scope of his or her employment.

(4) A public analyst appointed by a food authority must be treated for the purposes of this regulation as being an officer of the authority, whether or not the analyst's appointment is a whole-time one.

Service of documents

47.—(1) Any document which is required or authorised under these Regulations to be served on a person may be served—

- (a) by delivering it to that person;
- (b) in the case of an incorporated company or body, by delivering it to their secretary at their registered or principal office, or by sending it in a prepaid letter addressed to the secretary at that office; or
- (c) in the case of any other person, by leaving it or sending it in a prepaid letter addressed to that person at his or her usual or last known residence.

(2) Where a document is to be served on the occupier of any premises under these Regulations and it is not reasonably practicable to ascertain the name and address of the person on whom it should be served, or the premises are unoccupied, the document may be served by addressing it to the person concerned in the capacity of "occupier" of the premises (naming them), and—

- (a) by delivering it to some other person at the premises; and
- (b) if there is no other person at the premises to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the premises.

Revocations

48.—(1) In so far as they apply in relation to Wales, the instruments specified in column 1 of Part I of Schedule 6 are revoked to the extent specified in column 3 of that Part.

(2) The instruments specified in column 1 of Part II of Schedule 6 are revoked to the extent specified in column 3 of that Part.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(10)

24 November 2004

D. Elis-Thomas
The Presiding Officer of the National Assembly